

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Bear Association v Daniel J Kiefer**

Docket No. **275460**

L.C. No. **06-000144-CH**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The claim of appeal is DISMISSED for lack of jurisdiction for two reasons. First, the claim of appeal was untimely filed since it was not filed within 21 days of the August 10, 2006 MCR 7.202(6)(a)(i) final order as required by MCR 7.204(A)(1)(a). The December 18, 2006 order was a postjudgment order, not a final order. As *People v Mehall*, 454 Mich 1, 5(1997) demonstrates it is not the label of the order but the substance of the order that determines what type of order it is. The August 10, 2006 order clearly disposed of the claims and adjudicated the rights and liabilities of the parties. Thus, under MCR 7.202(6)(a)(i) it was a final order. The second reason for dismissal is that appellant cannot appeal a consent judgment, which the August 10, 2006 order was, nor a subsequent order that "is consistent with the decree and in no substantial effect modifies it." See *Dora v Lesinski*, 351 Mich 579, 582-583 (1958). As Justice Cooley noted in *Chapin v Perrin*, 46 Mich 130, 131 (1881) a party cannot appeal a consent judgment because the error is not that of the court, but of the parties.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 25 2007

Date

Sandra Schultz Mengel
Chief Clerk